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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. PEDRO AGUILAR-LEDEZMA, Defendant and Appellant.	B299420 (Los Angeles County Super. Ct. No. BA460419)

APPEAL from a judgment of the Superior Court of Los Angeles County, Henry J. Hall, Judge. Affirmed as modified.

David Andreasen, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Assistant Attorney General, Scott A. Taryle and Michael Katz, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Pedro Aguilar-Ledezma of second degree murder. On appeal, he contends that the trial court should have instructed the jury on voluntary manslaughter based on an imperfect self-defense theory. We reject that contention. However, we modify the judgment to correct a sentencing error and the abstract of judgment.

BACKGROUND

On August 7, 2017, Guadalupe Cucurachi was living in a tent in downtown Los Angeles. Cucurachi's boyfriend had bicycles for sale. That night, the victim Roberto Carlos Urbina, Luis Chavez, Francisco Medina, and the victim's girlfriend went to see Cucurachi about buying a bicycle. While Urbina was looking at the bikes, Aguilar-Ledezma shot Urbina.

According to Cucurachi, Aguilar-Ledezma rode up on a bicycle. As soon as Aguilar-Ledezma got off his bike, he pulled out a gun and told Urbina to take his hands out of his pockets and to drop whatever he had. Urbina and Aguilar-Ledezma argued about this for five minutes before Aguilar-Ledezma shot Urbina once, killing him. The bullet went through Urbina's arm then through his chest. Days later, Aguilar-Ledezma told Cucurachi that he shot Urbina because "he was not going to take the risk that the same would happen to him." Cucurachi understood Aguilar-Ledezma to mean he was afraid Urbina had a gun and would shoot him. Aguilar-Ledezma also told Cucurachi that he shot Urbina because he "didn't want them around."

Chavez similarly saw Aguilar-Ledezma come "flying" down the street on a bike and confront Urbina. Aguilar-Ledezma and Urbina had a verbal exchange, with Aguilar-Ledezma "coming on strong." Aguilar-Ledezma pulled out a gun, and Urbina held out his hands, palms up, and said something to the effect that he did

not want any problems. Aguilar-Ledezma told him, "Oh, you're going to have a fucking problem," and shot Urbina.

Medina saw Aguilar-Ledezma exit a tent and tell Urbina to "drop it" or "drop that shit." When Urbina asked what Aguilar-Ledezma was talking about, Aguilar-Ledezma shot Urbina. Medina asked Aguilar-Ledezma why he had shot Urbina, as they were unarmed and had come in peace. Aguilar-Ledezma responded by pointing the gun at Medina.

Another witness heard the gunshot and then saw Aguilar-Ledezma flee. To the witness, it looked as if Aguilar-Ledezma was trying to hide, "maybe like he was scared, trying to hide from being shot himself."

None of the witnesses saw Urbina with a gun, and one was not recovered from his body or the crime scene.

Aguilar-Ledezma was arrested several weeks later with a gun and methamphetamine in his possession.

Based on this evidence, a jury found Aguilar-Ledezma guilty of second degree murder with a personal gun use allegation (Pen. Code,[1] §§ 187, subd. (a), 12022.53, subds. (b), (c), (d); count 1) and of possessing methamphetamine while armed with a gun (Health & Saf. Code, § 11370.1, subd. (a); count 2). On June 19, 2019, the trial court sentenced Aguilar-Ledezma to an indeterminate term of 40 years to life and a determinate term of two years.

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[1] All further undesignated statutory references are to the Penal Code.

DISCUSSION

I. Voluntary manslaughter

Aguilar-Ledezma contends that the trial court should have instructed the jury on voluntary manslaughter based on a theory of imperfect self-defense. As we explain, there was insufficient evidence to support giving that instruction.

A trial court must instruct the jury on all general principles of law relevant to the issues raised by the evidence, including lesser included offenses and defenses on which the defendant relies and that are not inconsistent with his theory of the case. (*People v. Moye* (2009) 47 Cal.4th 537, 548.) Instruction on a lesser included offense is required when there is evidence the defendant is guilty of the lesser offense but not the greater. (*People v. Wyatt* (2012) 55 Cal.4th 694, 698.) Substantial evidence is evidence that a reasonable jury could find persuasive. (*People v. Benavides* (2005) 35 Cal.4th 69, 102.) However, the existence of any evidence, no matter how weak, will not justify instructions on a defense or a lesser included offense. (*Wyatt*, at p. 698.) We independently review whether the trial court erred by failing to instruct on a lesser included offense or a defense. (*People v. Simon* (2016) 1 Cal.5th 98, 133.)

Imperfect self-defense is the killing of another person under the actual but unreasonable belief that the killer was in imminent danger of death or great bodily injury. (*People v. Booker* (2011) 51 Cal.4th 141, 182.) " 'Fear of future harm—no matter how great the fear and no matter how great the likelihood of the harm—will not suffice. The defendant's fear must be of *imminent* danger to life or great bodily injury.' " (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1082.) Imminence refers to the defendant's perception of a harm that the defendant must

deal with immediately. (*In re Christian S.* (1994) 7 Cal.4th 768, 783.) Imperfect self-defense reduces murder to manslaughter by negating the element of malice. (*Ibid.*) Thus, imperfect self-defense is not a true defense but rather a form of voluntary manslaughter. (*People v. Barton* (1995) 12 Cal.4th 186, 200–201.)

And, where the defendant initiates a confrontation, the defendant may not be entitled to an imperfect self-defense instruction. In *People v. Seaton* (2001) 26 Cal.4th 598, 664, the defendant testified that he hit the victim with his fist. The *Seaton* victim responded by getting a hammer, which the defendant wrested from the victim and then used to attack the victim. Because this showed the defendant "to be the initial aggressor and the victim's response legally justified, defendant could not rely on unreasonable self-defense as a ground for voluntary manslaughter." (*Ibid.*; accord *People v. Vasquez* (2006) 136 Cal.App.4th 1176, 1179–1180.)

The evidence here is even less appropriate for an instruction on voluntary manslaughter than in *Seaton*. Here, Aguilar-Ledezma initiated the confrontation. He approached Urbina, who, by all accounts, had said and done nothing to attract Aguilar-Ledezma's attention, other than the simple and common act of having his hands in his pockets. There was no evidence that Urbina possessed any weapons, much less a gun. Aguilar-Ledezma nonetheless demanded that Urbina remove his hands from his pockets. Unlike the victim in *Seaton*, Urbina did not respond violently to the situation Aguilar-Ledezma had created. Instead, Urbina, at most, responded verbally to the confrontation initiated by Aguilar-Ledezma. Thus, Urbina did nothing to create an actual fear that he would harm Aguilar-Ledezma. Stated otherwise, that Urbina had his hands in his

pockets was insufficient evidence that Aguilar-Ledezma had an imminent fear for his safety.

Moreover, Aguilar-Ledezma's after-the-fact attempt to justify the shooting by offering that he shot Urbina because "he was not going to take the risk that the same would happen to him" contradicts any threat of imminent harm. At most, Aguilar-Ledezma's statement shows he may have feared something *might* happen to him, i.e., a fear of future harm. However, a defendant may not construct an absurd personal reality around a stranger's simple act of having his hands in his pockets, approach that person, initiate an angry confrontation, and shoot him to death.

II. Sentencing errors

As to count 2, the trial court imposed a lab fee under Health and Safety Code section 11372.5, subdivision (a). However, that fee only applies to enumerated crimes, of which a violation of Health and Safety Code section 11370.1, subdivision (a) is not one. (*People v. Myles* (2016) 6 Cal.App.5th 1158, 1160.) The order imposing the fee must therefore be reversed.

Next, the trial court stayed a restitution fine it imposed under section 1202.4 and waived fees under section 1465.8 and Government Code section 70373, pending proof of Aguilar-Ledezma's ability to pay. However, the abstract of judgment fails to reflect that they were either stayed or waived. The abstract of judgment must therefore be corrected.

Finally, the trial court awarded Aguilar-Ledezma 667 days of actual days credit. The abstract of judgment on page 2 correctly notes the award, but an attachment incorrectly notes that Aguilar-Ledezma was to receive zero credit time served. That notation is stricken.

DISPOSITION

The lab fee under Health and Safety Code section 11372.5, subdivision (a) as to count 2 is reversed, and the fee is stricken. The abstract of judgment is modified to reflect that the trial court stayed the Penal Code section 1202.4 restitution fine and waived the Penal Code section 1465.8 and Government Code section 70373 fees. Also, the notation on the abstract of judgment that Pedro Aguilar-Ledezma received zero credit for time served is stricken. The trial court is directed to prepare a modified abstract of judgment and to forward it to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

EDMON, P. J.

LAVIN, J.